

REMARKS/ARGUMENTS

The following remarks are responsive to the Official Action mailed July 5, 2006.

In the Official Action, the Examiner has objected to the figures as not showing every feature of the invention as specified in claims. Specifically, the Examiner objects to the feature of the "exterior surface having a groove with a coating disposed within the groove over a portion of a wire mesh." In response to this, Applicants have amended the drawings as well as the specification. No new matter has been added to the application as a result of these amendments. With regard to the newly added character references 1315, which highlights the groove of base plate 10 and the coating disposed on the perimeter of the mesh, it is apparent from Figs. 1b as well as other figures in the application that a groove is disposed of its exterior surface 12 of the base plate 10. Further, it is clear from Fig. 1 of the present application that the perimeter of the convex mesh 14 is disposed within the groove. In addition, a paragraph [0137] it is disclosed that a perimeter region of the convex mesh may be buried under a plasma coating, which secures the outerly facing surface of the base plate to which it is applied.

Claims 25, 36 and 37 are objected to because of various informalities. In response to this, Applicants have cancelled claims 36 and 37 and amended claim 25 so as to remove any informalities.

Claims 21-34 and 26-30 are rejected under 35 USC 103(a) as being unpatentable over U.S. Patent No. 5,370,697 to Baumgartner in view of U.S. Patent No. 4,579,769 to Hedman et al and U.S. Patent No. 5,926,685 to Krebs et al. Baumgartner is cited for teaching a vertebral contact element as having a resting shape

of a dome convexly extending from an orthopedic device. The Examiner acknowledges that *Baumgartner* fails to disclose the outer surface having a groove or an osteoconductive feature, such as a coating for attaching the contact element. However, the Examiner contends that *Hedman* discloses grooves 34, 52 that are used in the plate to secure or retain the resilient spring elements disclosed in *Hedman*. And *Krebs* is cited for teaching a coating binder that is used to secure a metal mesh to the surface of an implant. With all due respect to the Examiner, Applicants respectfully traverse the Examiner's rejection.

It is apparent that neither *Krebs* nor *Baumgartner* disclose a groove on the exterior surface of the implant in which the perimeter of the metal mesh is disposed. Moreover, although the Examiner cites *Hedman* as disclosing such, the groove to which *Hedman* refers is actually on an interior surface. As shown in Fig. 1 of *Hedman*, it is apparent that the recess 34 and 52 are disposed on an interior surface of opposing plates such that the recesses confront one another. The outwardly facing exterior surfaces of both plates 30 and 48 of *Hedman* are clearly smooth and do not include a groove. In addition, *Hedman* does not discuss a flexible wire mesh at all but instead discloses springs that are disposed within grooves 34 and 52. The springs 72 are designed to aide in the articulation and angulation of the device in *Hedman* and not to promote anchoring of the intervertebral implant to adjacent vertebral bodies as is the goal of the flexible wire mesh in the present application. Therefore, not only does *Hedman* not disclose a groove on the exterior surfaces of opposing base plates but the groove or recess for which *Hedman* does disclose houses spring members and not a vertebral body contact element such as the convex wire mesh. Therefore, Applicant asserts that claim 21 and it's

dependent claims contain patentable subject matter over the art cited and should be allowed.

Claims 21 and 25 are rejected under 35 USC 103(a) as being unpatentable over *Baumgartner* in view of *Hedman* and U.S. Patent No. 4,969,907 to *Koch* et al. *Koch* is cited for teaching a coating that secures an implant to a contact element, and the coating may be a plasma spring. Regardless, *Koch* does not satisfy the deficiencies of *Baumgartner* and *Hedman* as discussed above as *Koch* does not disclose a groove on the exterior surface of opposing base plates.

Claims 31-34, and 36-40 are rejected under 35 USC 103(a) as being unpatentable over *Baumgartner* in view of *Krebs*. And Claim 35 is rejected under 35 USC 103(a) as being unpatentable over *Baumgartner* in view of *Krebs* and further view of *Koch*. Applicants have hereby cancelled claims 31-40 thereby rendering the rejections moot.

In view of the above, each of the presently pending claims in this application is believed to be in immediate condition for allowance. Accordingly, the Examiner is respectfully requested to withdraw the outstanding rejection of the claims and to pass this application to issue.

If, however, for any reason the Examiner does not believe that such action can be taken at this time, it is respectfully requested that he/she telephone Applicant's attorney at (908) 654-5000 in order to overcome any additional objections which he might have.

If there are any additional charges in connection with this requested amendment, the Examiner is authorized to charge Deposit Account No. 12-1095 therefore.

Dated: October 5, 2006

Respectfully submitted,

By \_\_\_\_\_  
Raymond Garguilo, Jr.  
Registration No.: 50,930  
LERNER DAVID, LITTENBERG,  
KRUMHOLZ & MENTLIK, LLP  
600 South Avenue West  
Westfield, New Jersey 07090  
(908) 654-5000  
Attorney for Applicant

LD-446\

Application No.: 10/642,529

Docket No.: SPINE 3.0-437 CIP CIP CIP  
CIP CIP CON VI

**IN THE DRAWINGS**

Attachment: Replacement Sheet